



Paper No. 8

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OFFICE OF PETITIONS

In re Application of
David Cook et al.
Application No. 09/976,507
Filed: October 12, 2001
Attorney Docket No. 62967-034

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: DECISION DISMISSING
: PETITION
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This is a decision on the petition filed April 5, 2002, requesting that the above-identified application be accorded a filing date of October 12, 2001, with Page 2 of the specification as a part of the original disclosure.

On October 12, 2001, the application was filed.

On February 6, 2002, the Office of Initial Patent Examination (OIPE) mailed a Notice of Omitted Items stating that the application had been accorded a filing date January 15, 2002, but that Page 2 of the specification (description and claims) appeared to have been omitted from the application.¹

In response, on April 5, 2002, the present petition was filed. Petitioners argue that a complete application was present on October 12, 2001, for filing date purposes. Petitioners point to their postcard receipt and a copy of the Application Transmittal Sheet as evidence that Page 2 of the specification was among the application papers filed on October 12, 2001. Petitioners request that the application be accorded a filing date of October 12, 2001, with Page 2 as a part of the original disclosure.

The argument and evidence supplied with the petition have been carefully considered, but are not persuasive. The USPTO has a well-established and well-publicized practice of providing a receipt for papers filed in the USPTO to any applicant desiring a receipt. The practice requires that any paper for which a receipt is desired be filed in the USPTO with a self-addressed postcard identifying the paper. A postcard receipt which

¹The notice mailed February 6, 2002 erroneously listed the filing date accorded as that of January 15, 2002. The filing date accorded is actually October 12, 2001. January 15, 2002 is the date the oath and declaration was filed in response to the Notice to File Missing Parts mailed November 16, 2001.

itemizes and properly identifies the papers which are being filed serves as prima facie evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO. See section 503, Manual of Patent Examining Procedure (MPEP 503). Unfortunately, petitioners' postcard receipt does not bear an Office-date stamp from the USPTO. As such, the postcard receipt does not serve as evidence that the items listed therein were received in the USPTO. If petitioners have a copy of the postcard receipt for this application with a USPTO "Office date" stamp, a copy of that postcard should be submitted with any renewed petition. Furthermore, an application transmittal is, at best, only evidence of what was intended to be filed, not evidence of what was actually received or filed in the USPTO.

The petition is dismissed.

The copy of Page 2 of the specification supplied with the present petition will not be used for processing or examination, but will be retained in the application file. Petitioners may choose to file Page 2 as a preliminary amendment. If Page 2 is filed as a preliminary amendment, the amendment will be reviewed for new matter.

The petition fee of \$130.00 will be charged to counsel's deposit account, No. 50-0385, in accordance with the authorization presented in the petition, since the present petition was not necessitated by Office error.

The application is being returned to Initial Patent Examination Division for further processing with a filing date of October 12, 2001, using the application papers filed on that date and the application papers filed January 15, 2002.

Telephone inquiries concerning this matter may be directed to the undersigned Petitions Attorney at (703) 305-4497.

A handwritten signature in cursive script, reading "Patricia Faison-Ball". The signature is written in dark ink and is positioned above the printed name and title.

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy